

file

IN THE MATTER OF THE APPEALS : FINDINGS, CONCLUSIONS
OF FACT OF VIOLATION N92-40-8-1, AND ORDER
N92-40-9-1, C92-40-1-1, AND
N92-40-10-2, CO-OP MINING :
COMPANY, BEAR CANYON MINE,
ACT/015/025, EMERY COUNTY, :
UTAH : INFORMAL HEARING
CAUSE NO. ACT/015/025
---ooOoo---

Presiding: Dianne R. Nielson, Director
Division of Oil, Gas and Mining

Petitioner: Kimly Mangum
("Co-op") Mangum Engineering
Consultant to Co-op

Charles Reynolds
Compliance Coordinator
Co-op Mining Company

Division: Lowell Braxton
Associate Director for Mining

Hugh Klein
Reclamation Specialist
Issuing Inspector

Board: Joe Helfrich
Assessment Officer
Penalty Assessment

Thomas A. Mitchell, Esq.
Assistant Attorney General
Assessment Conference Officer

The Findings, Conclusions, and Order in this matter are based on information provided in connection with this informal hearing, and information in the files of the Division.

FINDINGS OF FACT

1. Notice of this hearing was properly given.
2. The Assessment Conference, to review the proposed penalties for NOVs N92-40-8-1, N92-40-9-1, and N92-40-10-2, was held immediately following this informal hearing regarding fact of violation. Requirement to pay the assessed penalty is stayed pending the decision in the informal review of fact of violation.
3. NOV N92-40-8-1 was issued on March 12, 1992, following an inspection by Hugh Klein on March 10-12, 1992. The violation was written for failure to have certified maps, in violation of Utah Admin. R645-301-512.100 and .140. The violation specifically referenced Plate 7-2 of the permit application package.
4. An examination of Plate 7-2 indicates that the plate was prepare on August 1, 1991, and was originally certified in 1991. The plate was revised on January 28, 1992, in response to a Division Order. There is no certification of the revision to the plate. The operations represented on the plate were not found to be in violation on the ground of rules or performance standards. The deficiency existed in the permit.
5. The inspector, Hugh Klein, was not aware of the previously-issued Division Order.

6. Kimly Mangum stated that there was no violation because the map was certified. He indicated that he did not believe that the rules required re-certification if the map was revised after the initial certification.

7. NOV N92-40-9-1 was issued on March 12, 1992, following an inspection on March 10-12, 1992. The violation was issued for failure to conduct operation only on lands specified in the permit, in violation of Utah Admin. R645-300-141. The violation referred specifically to a silt fence which was located outside the permit boundary downstream of culvert C-12V, west of the haul road.

8. Kimly Mangum states that the Division directed Co-op to place the silt fence in the stream at that location. The silt fence is shown on map 7-1B, outside the permit area. Movement of the silt fence is discussed in a DOGM inspection report dated July 12, 1989. Mr. Mangum indicates that the silt fence was being used as a supplemental structure and was not required by law.

9. Part of the abatement of N92-40-9-1, as amended, was to revise the permit boundary to include the portion of the stream extending to the silt fence, remove the deposits trapped by the silt fence, and remove the silt fence. Failure-To-Abate Cessation Order C92-40-1-1 was issued on May 12, 1992, for failure to abate N92-40-9-1. The plan amendment required in the abatement was timely submitted, but was lacking certain technical data. C92-40-1-1 was abated the same day it was issued, when Co-op was informed of the missing information and provided the data to the Division.

10. NOV N92-40-10-2 was issued on March 12, 1992, based on an inspection by Hugh Klein on March 10-12, 1992. N92-40-10-2 includes two parts. Part #1 was written for certifying an inaccurate map, in violation of Utah Admin. R645-301-731.740 and .750. The specific map referenced is Plate 7-3 of the Permit Application Package. Part #2 was written for certifying an inaccurate map, in violation of Utah Admin. R645-301-512.250, with specific reference to Plate 3-5 of the Permit Application Package.

11. The inaccuracy in Plate 7-3 is a decant structure which was installed in 1985 or 1986, but which was not included on the plate when it was prepared and certified on August 1, 1991, or when the map was further revised, prior to March 1992, in response to a Division Order. The pond, including the decant structure, was properly operating on the ground, consistent with rules and performance standards. The permit was defective in that the map certified by Co-op Professional Registered Engineer failed to accurately represent what was on the ground.

12. The inaccuracy in Plate 3-5 is a cross section, the scales of which are not accurately identified, and which depicts a ditch which does not exist on the ground. The structure, as it exists on the ground is operating properly, consistent with rules and performance standards. The permit was defective in that the map certified by Co-op's Professional Registered Engineer failed to accurately represent what was on the ground.

CONCLUSIONS OF LAW

1. There is sufficient reason to believe that the Division was previously aware of and may in fact have directed Co-op to move the silt fence which is the subject of N92-40-9-1. There is no documentation that the Division required Co-op to amend their permit boundary to include the relocated silt fence at the time the silt fence was relocated. There is also reason to believe that once the silt fence and entrapped sediment are removed from the drainage, there will be no "impact of mining" which remains at that point in the drainage and which would in this case require permitting during the life of the mine or reclamation of that specific segment of the drainage upon completion of mining.

2. Utah Admin. R645-301-512.100 requires in part that:

Cross Sections and Maps. Certain cross sections and maps required to be included in a permit application will be prepared by, or under the direction of, and certified by a qualified, registered professional engineer or land surveyor...

3. Utah Code Ann. § 58-22-8, the code under which Professional Engineers are licensed in the state of Utah, provides that:

All plans, maps sketches, surveys, drawings, documents, specifications, plats and reports prepared by a licensee under this chapter shall, when submitted to the licensee's client or filed with public authorities while his license is in effect, be stamped with a seal of the design authorized by the board, bearing the licensee's name and the legend "registered professional engineer" or "registered land surveyor."

4. A certification made on a given date cannot be taken to represent certification of any change or revision which is made after the date of the certification. In that situation, if the

document is required to be certified and therefore the document is prepared or revised by or under the direction of a registered professional engineer, it should be certified or re-certified.

5. The map or plate which is the subject of N92-40-8-1 was not properly certified.

6. The maps or plates which are the subject of N92-40-10-2 were not accurate representations of what existed on the ground and as a result were also not properly certified.

7. The maps or plates which are the subject of NOV N92-40-8-1 (Plate 7-2) and N92-40-10-2 (Plates 7-3 and 3-5) were the subject of a Division Order, issued on November 27, 1990, which required Co-op to reconstruct numerous maps and plates within its Bear Canyon mine plan. The map errors which are the subject of the above-referenced NOVs were not detected by the Division at the time the maps were submitted. Those errors should be corrected through the existing Division Order, not a new enforcement action.

ORDER

NOW THEREFORE, it is ordered that:

1. NOV N92-40-8-1 is vacated. The problem is a permit defect which was addressed under a Division Order. The remedial action required to correct the plate is still required, but is required for the operator to be in compliance with Division Order.

2. NOV N92-40-10-2, parts #1 and #2, are vacated. The problems are permit defects which were addressed under a Division Order. The remedial action required to correct the plates is still

required, but is required for the operator to be in compliance with Division Order.

3. NOV N92-40-9-1 is vacated. It is determined that a violation did not exist. It is further determined that remedial action in removal of the silt fence did not require that portion of the stream to be included within the permit area. It is recognized that this portion of the stream is included in the permit area as a result of Co-op's abatement of N92-40-9-1. Co-op may either leave that portion of the stream within the permit area and subject to regulation, or it may within 30 days of the date of this order, submit to the Division a complete and accurate, amended, re-certified map which removes the subject portion of the stream from the permit area. If no map is submitted within the 30 days, the Division will consider the current map to represent the approved permit area boundary.

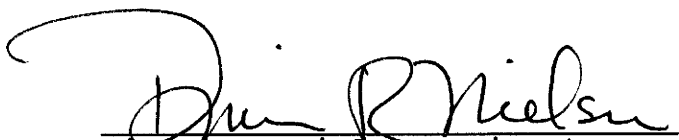
4. Failure-to-Abate Cessation Order C92-40-1-1 is vacated, because the underlying NOV is vacated.

5. The finalized assessments, resulting from the Assessment Conference for N92-40-8-1, N92-40-9-1, C92-40-1-1, and N92-40-10-2, are vacated.

6. Kimly Mangum, Registered Professional Engineer, acting as a consultant for Co-op Mining Company, should ensure that he knows and accurately represents the meaning and proper utilization of the Professional Engineering Certification on documents which are prepared by him or under his direction for his client.

7. The informal determination of fact of violation may be appealed by filing said appeal within 30 days of the date of this Order, in accordance with statutory and regulatory requirements, including placing the proposed assessed civil penalty in escrow.

SO DETERMINED AND ORDERED this 10th day of September, 1992.


Dianne R. Nielson, Director
Division of Oil, Gas and Mining
State of Utah

CERTIFICATE OF MAILING

I hereby certify that I caused a true and correct copy of the foregoing FINDINGS, CONCLUSIONS AND ORDER for Cause No. ACT/015/025 to be mailed by certified mail, postage prepaid, the 10th day of September 1992, to the following:

✓Kimly C. Mangum
Mangum Engineering Consultants
388 E Boynton Road
Kaysville, Utah 84037

Wendell Owen
Co-Op Mining Company
P.O. Box 1245
Huntington, Utah 84528

Kim A. Kubota

P 074 975 153

RECEIPT FOR CERTIFIED MAIL

NO INSURANCE COVERAGE PROVIDED
NOT FOR INTERNATIONAL MAIL
(See Reverse)

Sent to Kimly C Mangum	
Street and No. Mangum Engineering Consult 388 E Boynton Rd	
P.O., State and ZIP Code Kaysville UT 84037	
Postage	\$
Certified Fee	
Special Delivery Fee	
Restricted Delivery Fee	
Return Receipt showing to whom and Date Delivered	
Return Receipt showing to whom Date and Address of Delivery	
TOTAL Postage and Fees	\$
Postmark or Date	

<p>NOTE: Complete items 1 and 2 when additional services are desired, and complete items 3 and 4.</p> <p>Put your address in the "RETURN TO" Space on the reverse side. Failure to do this will prevent this card from being returned to you. The return receipt fee will provide you the name of the person delivered to and the date of delivery. For additional fees the following services are available. Consult postmaster for fees and check boxes for additional service(s) requested.</p> <p>1. <input checked="" type="checkbox"/> Show to whom delivered, date, and addressee's address. (Extra charge) 2. <input type="checkbox"/> Restricted Delivery (Extra charge)</p>	
<p>3. Article Addressed to:</p> <p>Kimly C Mangum Mangum Engineering Consultants 388 E Boynton Rd Kaysville UT 84037</p>	<p>4. Article Number P 074 975 153</p> <p>Type of Service:</p> <p><input checked="" type="checkbox"/> Registered <input type="checkbox"/> Insured <input checked="" type="checkbox"/> Certified <input type="checkbox"/> COD <input type="checkbox"/> Express Mail <input type="checkbox"/> Return Receipt for Merchandise</p> <p>Always obtain signature of addressee or agent and DATE DELIVERED.</p>
<p>5. Signature - Address X Anthony Mangum</p> <p>6. Signature - Agent X R. Thiny</p> <p>7. Date of Delivery 9-12-92</p>	<p>8. Addressee's Address (ONLY if requested and fee paid)</p>